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ATTORNEY GENERAL

Office of the Attorney General
State of Texas

April 2, 1991

Robert E. Shaddock
General Counsel
State Department of Highways
and Public Transportation
11th & Brazos
Austin, Texas 78701-2483

OR91-158

Dear Mr. Shaddock:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 11,185.

We have considered the exception you claimed, specifically, section 3(a)(4) and have reviewed the documents at issue. Section 3(a)(4) excepts from disclosure "information which, if released, would give advantage to competitors or bidders." This exception protects a governmental body's purchasing interests by assuring that the bidding process remains competitive until award of the contract. The section applies, however, only if there is a showing of harm in a particular competitive situation. See generally Open Records Decision Nos. 554, 541 (1990); 463 (1987); 319 (1982); see also Open Records Decision No. 231 (1979).

You advise us that the bidding process is not over since the proposals submitted in response to the first request for bids have been rejected and that the department has re-advertised to secure the services sought in the first request. The letter requesting the rejected proposals indicates that the requestor is interested in submitting a bid in response to the second request. Access in this instance to the proposals prior to award of the contract is likely to injure the department's purchasing interests as well as the competitive position of companies who may submit proposals in response to the re-advertisement. Thus, the facts you describe satisfy the showing required under section 3(a)(4), and you may withhold the requested proposals pending completion of the bidding process. But See V.T.C.S. art. 6252-17a, §§ 3(a)(10) (exception from

disclosure for certain commercial information applicable after award of the contract).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-158.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/lcd

Ref.: ID# 11,185

Enclosure: Open Records Decision Nos. 554, 541, 463, 319, 231

cc: Rob S. Welborn
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